IN THE COURT OF APPEALS OF IOWA

No. 9-1016 / 09-0657
Filed February 10, 2010

MARSHAL RAY ADCOCK,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Kelly Ann Lekar, Judge.

Marshall Ray Adcock appeals from the summary dismissal of his application for postconviction relief. **AFFIRMED.**

Michael O. Carpenter of Gaumer, Emanuel, Carpenter & Goldsmith, P.C., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly A. Griffith, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, P.J.

Marshall Ray Adcock appeals from the summary dismissal of his application for postconviction relief. He contends there is a genuine issue of material fact as to whether his guilty plea was knowing and voluntary. Our review is for correction of errors at law. *DeVoss v. State*, 648 N.W.2d 56, 60 (Iowa 2002).

The rules for summary judgment apply to a motion for summary disposition of a postconviction-relief application under section Iowa Code section 822.6 (2007). *Manning v. State*, 654 N.W.2d 555, 560 (Iowa 2002). Summary judgment is only proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* The moving party has the burden of showing the nonexistence of a material fact and the court is to consider all materials available to it in the light most favorable to the party opposing summary judgment. *Id.* A genuine issue of material fact exists if reasonable minds could draw different inferences and reach different conclusions from the undisputed facts. *Id.*

On appeal, Adcock contends his plea was not knowing and voluntary because "certain consequences were inadequately explained by his trial counsel and trial counsel made certain other misrepresentations." He asserts these claims create a disputed fact issue and "[a]side from the transcript of the plea hearing, there is no evidence whatsoever on the issue of whether [his] plea was knowing and voluntary." The record before us belies Adcock's claims his plea was not knowingly and voluntarily entered into. As the district court found:

> As concerns Adcock's claim that he received ineffective assistance of counsel from his trial attorney with regard to the plea agreement, the issue of reconsideration [of his sentence], the filing of a Motion in Arrest of Judgment, and the change in the status of the plea terms when he picked up new charges while he was awaiting sentencing, the Court also finds that Adcock cannot sustain these allegations. Terms of the plea agreement were placed on the record during the plea proceeding and Adcock indicated his agreement with those terms which did not include any reference to reconsideration. Adcock was adequately advised of his right to file a Motion in Arrest of Judgment during the plea proceeding. In his December 11, 2008 Amended and Substituted Application for Post Conviction Relief, Adcock admits that he didn't file a Motion in Arrest of Judgment because he thought the plea terms were favorable. It appears that it wasn't until the plea negotiations were sent off track by his own actions in picking up new charges that he became less than pleased with the terms of the plea negotiations. In light of these facts, Adcock cannot meet either of the prongs of an ineffective assistance of counsel claim.

Because Adcock's allegations are directly contradicted by the record and he has not raised a legitimate question concerning the credibility of the record, we conclude summary disposition was appropriate. *See Victor v. State*, 339 N.W.2d 617, 619 (Iowa Ct. App. 1983). Accordingly, we affirm

AFFIRMED.